

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

OUTRIGGER HOTELS HAWAII d/b/a
OHANA KEAUHOU BEACH RESORT

Employer

and

Case 37-RC-4024

INTERNATIONAL LONGSHORE AND WAREHOUSE
UNION, LOCAL 142

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer is a Hawaii corporation engaged in the business of operating hotels and restaurants. During the twelve month period ending May 31, 2002, the Employer derived gross revenues in excess of \$500,000 and purchased and received goods and materials valued in excess of \$5,000 directly from suppliers located outside the State of Hawaii. Based on the parties'

stipulation, I find that the Employer is engaged in commerce and that it will effectuate the purposes and policies of the Act to assert jurisdiction in this case.

3. The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.

4. The parties stipulated, and I find, that there is no contract bar to this proceeding.

5. By the instant petition, the Petitioner seeks to represent a unit comprised of all full-time, part-time, and casual food and beverage employees, including bartenders, cocktail servers, banquet servers, porters, wait help and dining room servers, hostesses, cashiers, bus help, cooks, dishwashers, stewards and pantry workers employed by the Employer at its Kailua-Kona, Hawaii facility, excluding all other employees including employees in the bargaining unit at the hotel (non Food and Beverage employees), grounds keeping employees, managers, chefs, supervisors, confidential employees, guards, and/or watch persons, as defined in the Act.

Positions of the Parties

As further explained below, the Petitioner currently represents a bargaining unit comprised of approximately 35 housekeeping, maintenance and front office employees employed by the Employer at the facility involved herein. By the instant petition, the Petitioner seeks to represent a separate unit of 57 food and beverage employees, excluding all other employees. The Employer opposes a separate food and beverage unit and takes the position that a wall-to-wall unit is the only appropriate unit of employees. The Employer bases its position that a wall-to-wall unit is the only appropriate unit on

the fact that the facility is a functionally integrated hotel operation whose employees are centrally controlled by a single person, General Manager Wayne Sterling. The Petitioner, on the other hand, asserts that the food and beverage employees share a community of interest separate and apart from that of the other hourly employees in the previously certified unit.

Background

The Employer¹ operates a full-service resort hotel in Kailua-Kona on the Island of Hawaii, in the State of Hawaii.² The facility consists of a seven-story, 311-room hotel with two restaurants and banquet facilities for 1,000 guests. The facility employs a total staff of 105 persons, including managers. The hotel's food and beverage department consists of the following facilities: the Verandah Lounge (a bar), the Kamaaina Terrace (a full service restaurant) which includes the main kitchen, the Kalanikai Bar and Grill (a quick service outlet with its own kitchen) and the main ballroom, which can be divided into as many as four banquet rooms. All of these facilities are located on the ground floor of the hotel.

The Employer has operated the hotel since August 1, 2001. Prior to that date, operation of the facility was split between two separate management companies. Thus, the hotel operations were managed by Aston Hotels, and the food and beverage operations were managed by Native Sons. The food and beverage employees employed

¹ Director of Human Resources Charles Kelley testified that the Employer employs 2,800 employees and owns or manages 45 resort properties in Hawaii and the South Pacific. The Keauhou Beach Resort is one of four properties operated by the Employer on the Island of Hawaii.

² According to the petition, the hotel facility involved herein is located at 78-6740 Alii Drive, Kailua-Kona, Hawaii.

by Native Sons were not represented by any labor organization. With respect to the hotel employees, however, on May 18, 2001, the Petitioner was certified in Case 37-RC-3987 as the exclusive bargaining representative of the following unit of employees of Aston Keauhou Beach Resort, herein called the certified unit:

All full-time and regular part-time employees of the hotel, including housekeeping, front desk, reservations, PBX operators, bell services, bellman, valets, maintenance and pool area employees, but excluding all food and beverage servers, pantry employees, cooks, dishwashers, hostesses, bartenders, bus help, landscaping³, and laundry employees⁴, managers, confidential employees, supervisors, and guards as defined in the Act.

At the time of the hearing in the instant case, there were 35 employees employed in the unit that was previously certified when Aston managed the hotel operation. Although the record does not clearly state this, it appears that the Employer assumed both the hotel employees and food and beverage operations without hiatus and retained a majority of the predecessor's employees, including those in the previously certified unit. However, as of the time of the hearing, the parties had not reached agreement covering the terms and conditions of employment of the employees in the certified unit.⁵

The Employer's Management Hierarchy

³ Landscaping employees were excluded from the unit certified in Case 37-RC-3987 because at that time, the landscape work was performed by a subcontractor. After the Employer took over the property, the Employer hired its own landscaping employees. The Petitioner does not seek to include the landscaping employees in the food and beverage unit, and in any event they would appear to be more appropriately included in the previously certified hotel unit rather than in the food and beverage unit.

⁴ The record does not explain why laundry employees were excluded from the certified unit. The record is silent as to whether or not the Employer currently employs any laundry employees.

⁵ Corporate Human Resources Director Charles Kelley testified that he and Keauhou Beach Resort Human Resources Manager Lily Lyons-Wong have participated in three contract negotiation sessions with the Petitioner with respect to the previously certified bargaining unit.

Wayne Sterling transferred to the property and became the general manager of the entire facility on August 1, 2001, when the Employer took over the operations of Aston Hotels and Native Sons. At that time, all other duplicative management positions, such as human resources director, controller, vice president, and general manager, were eliminated. For example, Donna Aiona, who had been the general manager of the Aston Hotels operation, stayed on in the position of hotel manager to oversee the housekeeping, guest services, bell and reservations employees.

The Employer's hotel is organized into the following departments: food and beverage, human resources, engineering, sales, and hotel. In addition to these departments, there is also a controller. The heads of the various departments report directly to General Manager Sterling. The heads of the departments take turns acting as manager on duty in his absence and attend weekly executive committee meetings. At the time of the hearing, the department heads were: Hotel Manager Donna Aiona, Sales Manager Sharon Paoa, Human Resources Manager Lily Lyons -Wong, and Food and Beverage Director Matt Pickett. At the time of the hearing, the chief engineer position was vacant.

The housekeeping, front office and maintenance employees⁶ report to supervisors who in turn report to Hotel Manager Donna Aiona. As noted above, the food and beverage department is headed Food and Beverage Director Matt Pickett. Reporting to Pickett are Executive Chef Abdul Chadi, who oversees a kitchen staff of cooks, bakers

⁶ The hotel's four maintenance employees and three landscapers are under the common supervision of the chief engineer, a position that was vacant at the time of the hearing. When there is one, the chief engineer reports to General Manager Sterling. Sterling testified that Hotel Manager Aiona is also involved in directing the maintenance employees and landscapers.

and stewards, Banquet Manager Susan Wakefield-David, who oversees the banquet bartenders, servers and porters, and Food and Beverage Manager Donald Yun. Reporting to Yun are the two restaurant managers, Robert Young and Natalie Colon, who each oversee a crew of servers, bartenders, hostesses and bus helpers. Sterling testified that Yun and Wakefield-David might assist each other with supervisory duties on occasion, whereas Executive Chef Abdul Chadi would not oversee restaurant servers or banquet employees.⁷

At their weekly executive committee meetings, the executive committee discusses the day-to-day operations, policies, budget and staffing needs of the hotel. The latter may result in the sharing of employees between departments should the need arise due to spikes in hotel occupancy. Information about each department is shared at these meetings, and each department head brings the work schedule for their respective departments to these meetings. In addition to the executive committee meetings, General Manager Sterling also holds meetings with the department heads and managers of individual departments.

General Manager Sterling is required to live on the hotel property. The department heads take turns serving as the "manager on duty" (MOD), when Sterling is away from the facility for any significant length of time. The MOD assignment is done on a rotational basis. Sterling estimated that the managers who participate in the rotation

⁷ The parties stipulated, and I find, that the following individuals are supervisors within the meaning of the Act and are should be excluded from any unit found to be appropriate: General Manager Wayne Sterling; Food and Beverage Director Matt Pickett; Food and Beverage Manager Don Yun; Restaurant Manager Robert Young; Assistant Restaurant Manager Natalie Colon; Executive Chef Abdul Chadi; Sous Chef Arnold Arellano; Sous Chef David Dekker; Pastry Chef Jennifer Laszl; Banquet Manager Susan Wakefield; Sales/ Catering Coordinator Kirsten Kila; and Banquet Captain Cathleen Cox.

serve as MOD about once every six to eight weeks. Sterling testified that Food and Beverage Director Matt Pickett and Banquet Manager Susan Wakefield-David serve as MOD, but Food and Beverage Manager Donald Yun currently does not do so.

When acting as MOD, the department head oversees all operations of the hotel, not just their own department. The MOD has the authority to extend the entertainment hours. This could entail asking bartenders and servers to work longer hours. If a food and beverage supervisor happens not to be present to make arrangements for employee coverage, this is worked out by the MOD.

Common Terms and Conditions of Employment

The only witnesses to testify at the hearing were General Manager Sterling and Director of Human Resources Charles Kelley. Kelley's office is located in the Employer's corporate headquarters in Honolulu, Hawaii. Kelley testified that he and another corporate human resources director in Honolulu, Lili Hallett, work closely with the human resources manager at the Keauhou Beach Resort, Lily Lyons-Wong. Kelley testified that the head of the Honolulu corporate human resources department, Senior Vice President of Human Resources and Planning Bill Brown, sets human resources policy for all the Employer's properties, including Keauhou Beach Resort. Corporate-wide policies include those contained in the employee handbook and employee benefits book generated by the human resources department in Honolulu. These handbooks contain company policies and guidelines that all hotels operated by the Employer must follow. Consequently, all departments in the Employer's Keauhou Beach Resort facility, as well as the employees at its 44 other properties, have the same standard procedures

and policies governing hiring, pay, job performance standards, appraisals, grievances, and disciplinary practices. The corporate human resources division also provides a standard corporate program of new employee orientation and training for all employees. The standard training program is not specific to the employees' job classification.

The employees in the certified unit and in the petitioned-for unit are hourly employees. The pay scale, pay periods, and fringe benefits such as vacation pay and sick leave are determined by corporate headquarters and are the same for both groups of employees as they are for other employees throughout the company. Both groups of employees receive the same employee handbook and employee benefits book generated by the Employer's corporate headquarters. They also receive the same parking privileges, a 50 % discount on hotel meals and have access to the same locker room and break facilities. The housekeeping employees wear uniforms that are different from those worn by the front desk employees, and the uniforms of both groups of employees differ from those of the food and beverage employees.

The Employer's hotel is a 24-hour operation. Employees who are under the direction of the hotel manager work on one of three shifts: a morning shift starting at about 6:00 a.m., an afternoon shift starting at about 2:00 p.m. and a graveyard shift starting at about 10:00 p.m. The food and beverage operation is close to being a 24-hour operation, with kitchen employee shifts starting at 4:00 a.m. and banquet employee shifts going as late as midnight. The Kamaaina Terrace Restaurant is open to customers from 9:30 a.m. until about 11:30 p.m.; the Kalanikai Bar and Grill is open from 11:00 a.m.

until 5:00 p.m. and the Verandah Lounge is open from open from 11:00 a.m. until 10:00 p.m. or midnight, depending on hotel occupancy.

Employee work schedules are posted on Fridays. Department heads are required to submit their department work schedules to the general manager by Thursday of each week. In the food and beverage department, the banquet manager fills out the schedule of the banquet employees, while an unnamed manager fills out the work schedule for the rest of the department. In addition to being posted on a bulletin board in each of the food and beverage outlets, the work schedules of food and beverage employees are also available in the offices of the food and beverage director, the food and beverage manager, the general manager and in a binder used by the MOD. The work schedules of the housekeeping and maintenance employees are posted on the employee bulletin boards in the maintenance department and housekeeping work areas and are available in the hotel manager's office, the general manager's office and in the MOD binder.

While employees in the certified unit and the petitioned-for unit use the same employee entrance to the hotel, they clock in on different two time-keeping systems. Thus, food and beverage employees log on through a computer system, while the housekeeping, maintenance and front office employees use a system called Stelex. Both systems, however, are linked to the same computerized system. The record reflects that the Employer intends to install a company-wide card swipe system called Kronos at the facility by the end of calendar year 2002. The card swipe device will be placed at the employee entrance to the building, which is located on the lower level of the parking garage.

The hiring process for new employees in all departments begins with the applicant contacting the human resources department and completing a job application form. After the human resources department conducts an initial screening and checks the applicant's references, the application is passed on to the appropriate department head. The department head for the area that has the job opening conducts the employment interview. General Manager Sterling does not conduct interviews of hourly employees and supervisors from other departments are not normally involved in the interview. Although the director of sales may sit in on an interview for an opening in a higher level position such as banquet captain, this is an infrequent occurrence. After the interview is completed, the department head makes the hiring recommendation to the human resources department. At that point the human resources department conducts what Sterling described as "screening" and "testing." The hiring recommendation then goes to Sterling, who has the final say in all hiring for the hotel. Sterling testified that "a majority of the time" he signs off on the hiring after talking to the department manager.

The record discloses that the same personnel forms are used corporate-wide, including discipline forms, interdepartmental transfer forms and employee evaluation forms (for employees in the same job classification). Sterling testified that pursuant to corporate-wide guidelines, the general manager's signature must be on all forms, including pay raise approval forms, written discipline, termination papers and leave request forms. Sterling also testified that he gives the final approval for terminations, suspensions, grievances and pay raises. The record does not indicate whether it is the

employee's immediate supervisor fills out his or her evaluation form, or whether Sterling also signs employee evaluation forms.

With respect to disciplinary matters, such as suspensions and terminations, the record reflects that disciplinary paperwork is initiated by the department head and goes to the Human Resources Department before coming to Sterling for signature. According to Sterling, there is usually a consultation that takes place between the issuing manager and Human Resources before the final decision comes to him for review.

The Employer has a corporate-wide grievance policy that is based upon an open door policy. Pursuant to this open door policy, an employee may take a grievance with their supervisor up the chain of command from their department head, to the human resources department, to the general manager of the hotel, to the corporate human resources department, and all the way up to the CEO of the corporation if they wish.

Employee Interchange

Job vacancies within the Keauhou Beach Resort facility are posted both on a common central bulletin board and on all departmental bulletin boards through out the facility. If an employee wishes to permanently transfer to a different department, the employee's current department supervisor must sign a form and human resources and the general manager must approve the transfer. Director of Human Resources Kelly testified that corporate human resources would also review and approve the transfer, although this may occur after the fact, and he could not recall any ever being denied. The corporate human resources office provides oversight in order to assure that any permanent transfers are consistent with corporate policy.

Although the Employer's witnesses described the procedure for an interdepartmental transfer, they did not give any clear examples of an employee who had permanently transferred from one department to another. Instead, as Sterling testified, it may be the case that a number of employees have been cross-trained and may hold dual job classifications. Most of this cross training, however, is within a single department, for example, servers may help on the line in the kitchen and front office cashiers may cross train as a night auditor or PBX operator. There is no evidence that the Employer has a program of cross training that enables all employees to perform all job functions throughout the hotel. Sterling testified that the Employer would not force an employee to take on additional work outside of his or her department. Thus, housekeeping employees generally have not been cross-trained to function as servers. However, Sterling testified that four housekeeping employees who expressed an interest in working additional hours in the banquet department were used for a cocktail reception.

Although the record contains a computer generated list of "dual classification" employees for the Keauhou Beach Resort, neither of the Employer's witnesses could fully explain this exhibit, and neither witness possessed first hand knowledge of the work done by the employees named on the list. According to the testimony of General Manager Sterling, any time an employee works in a job classification that is different from their normal classification -- no matter how few hours or how infrequent the work is -- the central payroll department lists them as having a pay code for that job classification. Director of Human Resources Kelley testified that only payroll records would show whether, and for how long, a particular employee worked in a classification. Since the

hearing record does not contain any such payroll records, the "dual classification" list is of limited value in assessing the frequency of interchange of employees between the food and beverage department and other departments in the hotel.

It appears that the vast majority of employees on the "dual classification" list merely worked more than one job classification in the same department. Further, the "dual classification" list reflects that, at most, only five employees may have worked in both the petitioned-for food and beverage department and another department in the previously certified bargaining unit since the Employer took over in August of 2001. More specifically, Jared Ishida is listed as a banquet porter and as wait help in the food and beverage department and as a housekeeper.⁸ Rey Del Rosario is listed as a bartender and as wait help in the food and beverage department and also is listed as a purchasing clerk. Harry Doaner is listed as a general maintenance employee, as a housekeeper in the public areas and as wait help in the food and beverage department. Jeffrey Ortiz is listed as a banquet porter and as wait help in the food and beverage department and as a housekeeping employee. Manuiti Starr is listed as a bartender, bus help and cocktail wait help in the food and beverage department and as a bell person.

The record describes the circumstances in which employees from the various departments interact with each other. For example, maintenance department employees fix electrical and mechanical problems that arise anywhere in the hotel, including the kitchen, restaurants and banquet rooms where food and beverage employees work.

⁸ Although generally unable to expand upon the information found on "dual classification" list, General Manager Sterling was able to supplement the information concerning Jared Ishida. Sterling testified that although Ishida normally works as a bus helper in the Kamaaina Terrace, he has also done an unknown amount of housekeeping work.

Maintenance calls are recorded in maintenance logs kept at the front desk, in the maintenance office, and in the restaurant. Maintenance calls to the restaurant are logged in by the restaurant supervisor or by the hostess/cashier and are initialed by the maintenance employee. Sterling estimated that maintenance employees perform maintenance work in the food and beverage department at least once a week. Sterling also testified that three of the seventeen housekeeping employees clean the public areas of the hotel, including the restaurant and banquet facilities.

Restaurant personnel must interact with the front office employees to verify guests' charging privileges. Someone from the restaurant must go to the front office on a daily basis to obtain a list of guests who may make charges in the restaurant. This task may be performed by the banquet captain, the restaurant supervisor, the cashiers or the hostesses. The restaurant supervisors or the cashiers and hostesses also transmit restaurant charges made by guests to the night auditor in the front office for entry on the guest's statement of account.

The record reflects that food and beverage employees also interact with the inventory control officer in the front office in connection with the monthly and quarterly inventory of food and beverage items. The inventory is conducted jointly by a food and beverage employee and an employee from the controller's office using a pre-printed inventory sheet.

Front office employees are responsible for ensuring that VIP amenities, such as fruit baskets and beverages are provided to VIP patrons, and are required to alert all departments, including the food and beverage department, of the presence of VIP patrons.

Bell employees pick up food amenities and any special instructions from the kitchen and deliver them to the guest's room. (The hotel does not currently offer room service.)

After the guest is finished with them, used plates and trays are either picked up by housekeeping staff, a bell person or by a wait person from the Kamaaina Terrace. At the end of each restaurant shift, the manager of the Kamaaina Terrace restaurant assigns a wait person to check the hotel hallways for used dishes and trays. Housekeeping employees place used dishes in a service area located near the service elevator on each floor. Eventually the dishes are taken downstairs to the dishwasher by any employee in the hotel, including the housekeepers, the restaurant employees, the kitchen employees and even the general manager.

ANALYSIS

The issue to be decided in the instant case is whether the unit sought by the Petitioner is appropriate for collective bargaining. In making unit determinations, the Board's task is not to determine the most appropriate unit, but simply to determine an appropriate unit. *P.J. Dick Contracting*, 290 NLRB 150 (1988). In so doing, the Board looks "first to the unit sought by the petitioner. If it is appropriate, [the] inquiry ends. If, however, it is inappropriate, the Board will scrutinize the Employer's proposals." *Dezcon, Inc.*, 295 NLRB 109, 111 (1989).

In *Omni International Hotel*, 283 NLRB 475 (1987), the Board stated:

It is beyond peradventure that the Act allows a union to petition for *an* appropriate unit, and does not require it to seek the *most* appropriate unit, even when a different unit than that petitioned-for might be more appropriate than the one it seeks.

As the Board noted in Omni International Hotel, for a six year period of time in the 1960s, it "applied a rigid rule that only an overall unit consisting of all hotel/motel employees would be found appropriate for bargaining." *Id.* In 1966, the Board reversed Arlington Hotel Co., 126 NLRB 400 (1960), which had established this rigid rule, and announced that it would make unit determinations in the hotel/motel industry on a case-by-case basis, utilizing the same traditional community of interest criteria used in other industries. *Id.*, citing 77 Operating Co., 160 NLRB 927 (1966), *enfd.* 387 F.2d 646 (4th Cir. 1967). This principle was reaffirmed in Omni International Hotel, and it continues to be the principle applied by the Board today in making hotel/motel unit determinations. Dinah's Hotel & Apartments, 295 NLRB 1100, 1101 (1989).

In conducting the community of interest analysis to determine whether the unit sought is an appropriate one, the Board examines a number of factors, such as bargaining history, functional integration, interchange of employees, hours of work, method of payment of wages, benefits, supervision, and differences or similarities in training and skills. Atlanta Hilton & Towers, 273 NLRB 87 (1984), *mod. on other grds.* 275 NLRB 1413 (1985); Moore Business Forms Inc., 173 NLRB 1133 (1968); Doubleday & Co., 165 NLRB 325 (1967).

Based upon the record as a whole, including the common supervision of all food and beverage employees under Food and Beverage Director Matt Pickett and the supervisors who report to him, the minimal number of permanent or temporary transfers into or out of the food and beverage department and/or dual classifications with other departments, I find that there is a sufficient community of interest within the food and

beverage department to warrant a finding that the petitioned-for unit is *an* appropriate unit for collective bargaining. Stanford Park Hotel, 287 NLRB 1291 (1988).

Moreover, the conclusion that a separate unit of food and beverage employees is an appropriate unit is compelled by the bargaining history at this facility and by the previous Board certification in Case 37-RC-3987. I find this history to be a more compelling factor than the industry pattern of overall hotel units on the Island of Hawaii that is relied upon by the Employer. Furthermore, for the reasons cited by the majority opinion in Omni International Hotel, 283 NLRB at 476, I find the Employer's reliance on Westin Hotel, 277 NLRB 1506 (1986) to be misplaced.

Historically, the food and beverage employees at the Employer's facility have been under separate supervision from the hotel operations employees and this separate supervision continued after the Employer took over management of the entire operation on August 1, 2001. The fact that the food and beverage employees were previously employed by Native Sons, whereas the housekeeping, maintenance and front office employees were separately employed by a completely different employer, Aston Hotels, demonstrates that the two groups can function independently under separate supervision. More importantly, the separate supervision of the hourly employees within the food and beverage department has continued under the multiple layers of supervision in the Employer's management hierarchy. Thus, there are three levels of management between a server in the Kamaaina Terrace and General Manager Sterling. Consequently, the Employer's organizational structure also supports the finding that a smaller than hotel-wide community of interest exists at the Keauhou Beach Resort facility.

The record does not establish that the Employer has the strong, highly centralized administration or high degree of functional integration and job overlap that would require a finding that a wall-to-wall unit is the only appropriate unit. Compare, Ramada Beverly Hills, 278 NLRB 691 (1986). Contrary to the Employer's contention that all of its employees are centrally controlled by General Manager Sterling, his testimony demonstrates that he has little knowledge of the employees' work assignments. Far from being intimately familiar with all employees on the property, Sterling did not know the home department of employees listed on the "dual classification" list, did not know the names of the housekeeping employees who worked briefly in the banquet department, and could not recall the name of a food and beverage employee who had been suspended.

The record evidence of employee interchange and contact is equally unpersuasive. There is minimal evidence of employee interchange by only five out of ninety-two employees at the facility. Furthermore, the evidence is inconclusive because the only employees who have been cross-trained in other departments are those who volunteered to do so. The skills and training of the food and beverage employees who deal with food, differ from those of the housekeeping and maintenance employees who deal with cleaning and repair tasks. Although the fact that all employees receive the same fringe benefits and work subject to the same personnel policies would show that an overall unit, if sought, also might be an appropriate unit, these facts do not compel a contrary finding because they do not establish that the requested unit is not an appropriate unit. Omni International Hotel, 283 NLRB at 476. Consequently, on the

record as a whole, I find that the Employer has not met its burden of proof to establish that a unit limited to food and beverage employees is inappropriate for bargaining.

Finally, the Board has found that food service and kitchen employees comprise an appropriate residual unit in a hotel setting, provided that they include all the unrepresented employees of the type covered by the petition. Water Tower Inn, 139 NLRB 842, 848 (1962). In that case, the Board found a residual unit of food service and kitchen employees appropriate despite the fact that auditing employees were left unrepresented. In the instant case, other than the landscape employees, who share a community of interest with the maintenance employees and therefore would more appropriately be included in the previously certified unit, the Petitioner herein seeks to represent a unit of all hourly employees omitted from the established bargaining unit in Case 37-RC-3987. Consequently, I find this to be an appropriate residual unit.

Based on the foregoing, and given the previous certification of virtually all the hotel employees, including housekeeping, maintenance and front office employees, I find that the petitioned-for unit is an appropriate unit for collective bargaining purposes. Accordingly, an election shall be directed in the following unit:

All full-time, regular part-time and casual food and beverage employees including bartenders, cocktail servers, banquet servers, porters, wait help and dining room servers, hostesses, cashiers, bushelp, cooks, dishwashers, stewards and pantry workers, employed by the Employer at its Kailua-Kona, Hawaii facility; excluding all other employees including those in the bargaining unit certified in Case 37-RC-3987, groundskeeping

employees, managers, chefs, confidential employees, guards, and/or watch persons, [and supervisors as defined in the Act](#).

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than twelve months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States Government may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period or prior to the completion of the last job for which they were employed, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than twelve months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the Regional Director of Region 20 who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Subregion 37 Office, 300 Ala Moana Boulevard, Room 7-245, Post Office Box 50208, Honolulu, Hawaii 96850, on or before July 26, 2002. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provision of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570.

This request must be received by the Board in Washington by August 2, 2002.

DATED at San Francisco, California, the 19th day of July, 2002.

/s/ Robert H. Miller

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